(3) Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

No. _____

In The
Supreme Court of the United States

JAMES KNISKERN, et al.,
Petitioners,

v.

RON AMSTUTZ, et al.,
Respondents.

On Petition for Writ of Certiorari
To the Ohio Supreme Court & Ohio Court of Appeals,
Eighth Appellate District

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

Vol. II of IV
Pages 38- 81, I-K

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APPENDIX I

STATE STATUTES

Ohio R. C. § 109.02 DUTIES

The attorney general is the chief law officer for the state and all its departments and shall be provided with adequate office space in Columbus. Except as provided in division (E) of section 120.06 and in sections 3517.152 to 3517.157 of the Revised Code, no state officer or board, or head of a department or institution of the state shall employ, or be represented by, other counsel or attorneys at law. The attorney general shall appear for the state in trial and argument of all civil and criminal cases in the supreme court in which the state is directly or indirectly interested. When required by the governor or the general assembly, the attorney general shall appear for the state in any court or tribunal in a cause in which the state is a party, or in which the state is directly interested. Upon the written request of the governor, the attorney general shall prosecute any person indicted for a crime.

Ohio R. C. 723.01 LEGISLATIVE AUTHORITY TO HAVE CARE, SUPERVISION, AND CONTROL OF STREETS

Municipal corporations shall have special power to regulate the use of the streets. Except as provided in section 5501.49 of the Revised Code, the legislative authority of a municipal corporation shall have the care, supervision, and control of the public highways, streets, avenues, alleys, sidewalks, public grounds, bridges aqueducts, and viaducts within the municipal corporation, and the municipal corporation shall cause them to be kept open, in repair, and free from nuisance (2001 S § 2.01 eff. 7-6-01; 2001 S 108, § 2.02 eff. 7-6-1; 1996 H 350 eff. 1-27-97

UNCODIFIED LAW

2001 S 108, § 1 eff. 7-6-01

It is the intent of this act (1) to repeal the Tort Reform Act, Am.Sub.H.B. No. 350 of the 121st General Assembly, 146 Ohio Laws 3867, in conformity with the Supreme Court of Ohio's decision in State ex.rel. Ohio Academy of Trial Lawyers v. Sheward (1999), 86 Ohio St.3d 451; (2) to clarify the status of the law; and (3) to revive the law as it existed prior to the Tort Reform Act.

2001 S 108 § 3, eff. 7-6-01, reads in part:

Sections 163.17, 723.01, 1343.03, 1775.14, 2305.01, 2305.11, 2305.35, 2307.33, 2307.71, 2307.72, 2307.73, 2307.78, 2315.20, 2317.62, 2323.51, 2744.04, 4112.99, 4909.42, 5591.36, and 5591.37 of the Revised Code are revived and supercede the versions of the same sections that are repealed by Section 2.02 of this act.

2743.02 WAIVER OF IMMUNITY OF STATE; PERSONAL IMMUNITY NOT AVAILABLE TO STATE; HOSPITALS OF POLITICAL SUBDIVISIONS; COLLATERAL RECOVERY; INDEMNIFICATION OF PERSONNEL; ACTIONS AGAINST STATE PERSONNEL; THIRD-PARTY COMPLAINTS AND COUNTERCLAIMS

(A)(1) The state hereby waives its immunity from liability and consents to be sued, and have its liability determined, in the court of claims created in this chapter in accordance with the same rules of law applicable to suits between private parties, except that the determination of liability is subject to the limitations set forth in this chapter and, in the case of state universities or colleges, in section 3345.40 of the Revised Code, and except as provided in division (A)(2) of this section. To the extent that the state has previously consented to be sued, this chapter has no applicability.

Except in the case of a civil action filed by the state, filing a civil action in the court of claims results in a complete waiver of any cause of action, based on the same act or omission, which the filing party has against any officer or employee, as defined in section 109.36 of the Revised Code. The waiver shall be void if the court determines that the act or omission was manifestly outside the scope of the officer's or employee's office or employment or that the officer or employee acted with malicious purpose, in bad faith, or in a wanton or reckless manner.

(2) If a claimant proves in the court of claims that an officer or employee, as defined in section 109.36 of the Revised Code, would have personal liability for his acts or omissions but for the fact that the officer or employee has personal immunity under section 9.86 of the Revised Code, the state shall be held liable in the court of claims in any action that is timely filed pursuant to section 2743.16 of the Revised Code and that is based upon the acts or omissions.

(B) The state hereby waives the immunity from liability of all hospitals owned or operated by one or more political subdivisions and consents for them to be sued, and to have their liability determined, in the court of common pleas, in accordance with the same rules of law applicable to suits between private parties, subject to the limitations set forth in this chapter. This division is also applicable to hospitals owned or operated by political subdivisions which have been determined by the supreme court to be subject to suit prior to

July 28, 1975.

(C) Any hospital, as defined under section 2305.11 of the Revised Code, may purchase liability insurance covering its operations and activities and its agents, employees, nurses, interns, residents, staff, and members of the governing board and committees, and, whether or not such insurance is purchased, may, to such extent as its governing board considers appropriate, indemnify or agree to indemnify and hold harmless any such person against expense, including attorney's fees, damage, loss, or other liability arising out of, or claimed to have arisen out of, the death, disease, or injury of any person as a result of the negligence, malpractice, or other action or inaction of the indemnified person while acting within the scope of his duties or engaged in activities at the request or direction, or for the benefit, of the hospital. Any hospital electing to indemnify such persons, or to agree to so indemnify, shall reserve such funds as are necessary, in the exercise of sound and prudent actuarial judgment, to cover the potential expense, fees, damage, loss, or other liability. The superintendent of insurance may recommend, or, if such hospital requests him to do so, the superintendent shall recommend, a specific amount for any period that, in his opinion, represents such a judgment. This authority is in addition to any authorization otherwise provided or permitted by law.

(D) Recoveries against the state shall be reduced by the aggregate of insurance proceeds, disability award, or other

collateral recovery received by the claimant. This division does not apply to civil actions in the court of claims against a state university or college under the circumstances described in section 3345.40 of the Revised Code. The collateral benefits provisions of division (B)(2) of that section apply under those circumstances.

(E) The only defendant in original actions in the court of claims is the state. The state may file a third-party complaint or counterclaim in any civil action, except a civil action for two thousand five hundred dollars or less, that is filed in the court of claims.

(F) A civil action against an officer or employee, as defined in section 109.36 of the Revised Code, that alleges that the officer's or employee's conduct was manifestly outside the scope of his employment or official responsibilities, or that the officer or employee acted with malicious purpose, in bad faith, or in a wanton or reckless manner shall first be filed against the state in the court of claims, which has exclusive, original jurisdiction to determine, initially, whether the officer or employee is entitled to personal immunity under section 9.86 of the Revised Code and whether the courts of common pleas have jurisdiction over the civil action.

The filing of a claim against an officer or employee under this division tolls the running of the applicable statute of limitations until the court of claims determines whether the officer or employee is entitled to personal immunity under

section 9.86 of the Revised Code.

(G) Whenever a claim lies against an officer or employee who is a member of the Ohio national guard, and the officer or employee was, at the time of the act or omission complained of, subject to the "Federal Tort Claims Act," 60 Stat. 842 (1946), 28 U.S.C. 2671, et seq., then the Federal Tort Claims Act is the exclusive remedy of the claimant and the state has no liability under this section.

OHIO R. C. § 2744.02 POLITICAL SUBDIVISION NOT LIABLE FOR INJURY, DEATH, OR LOSS, EXCEPTIONS(PRE 1996 H 350 AMENDMENT

(B)(3) Except as otherwise provided in section 3746.24 of the Revised Code, political subdivisions are liable for injury, death, or loss to persons or property that is caused by their failure to keep public roads, highways, streets, avenues, alleys, sidewalks, bridges, aqueducts, viaducts, or public grounds within the political subdivisions open in repair and free from nuisance, except that it is a full defense to such liability, when a bridge within a municipal corporation is involved, that the municipal corporation does not have the responsibility for maintaining or inspecting that bridge.

OHIO R.C. § 5535.15 ROAD CONSTRUCTION OR IMPROVEMENT BY COUNTY, TOWNSHIP, OR

MUNICIPAL CORPORATION

(A) The board of county commissioners, board of township trustees, or legislative authority of a municipal corporation may maintain, repair, construct, reconstruct, improve, or widen any section of a road under the control of the state or another political subdivision if all of the following apply:

(1) The county, township, or municipal corporation proposing the project declares to the state or political subdivision the reasonable necessity of the construction or improvement. The declaration shall be by resolution or ordinance. A certified copy shall be sent to the director of transportation when a state highway is the subject of the proposal and to the affected political subdivision when any other highway is the subject of the proposal.

(2) The documents, plans, reports, or other materials relating to the project comply with applicable design development criteria of the department of transportation and the federal highway administration, which compliance is determined by the director in the manner provided in section 5521.13 of the Revised Code;

(3) The county, township, or municipal corporation proposing the project certifies to the state or political subdivision, in the resolution or ordinance required by division (A)(1) of this section, that all funds necessary to complete the project are available either privately or from the

county, township, or municipal corporation proposing the project.

The county, township, or municipal corporation proposing the project may acquire by gift, purchase, condemnation, or otherwise, any lands required for the construction or improvement.

(B) Upon compliance with the requirements of division (A) of this section, the county, township, or municipal corporation proposing the project may proceed only with the consent of the department. The state or other political subdivision having control over the road may contribute to the cost of the construction or improvement.

(C) Any person may appeal an action taken by a county, township, or municipal corporation under this section. The appeal may be taken to the probate court or the court of common pleas of any county in which any part of the construction or improvement is located, and shall be limited to a determination of compliance with division (A) of this section.

(D) After completion of the project, the state or political subdivision having control of the road shall repair and maintain it if the project is accepted by the state or political subdivision. Upon such acceptance, the county, township, or municipal corporation constructing or improving the road under this section may contribute to the cost of repair and

maintenance of the road. If the project is not accepted by the state or political subdivision having control of the road, the county, township, or municipal corporation constructing or improving the road shall repair and maintain it.

OHIO R.C. § 5591.36 GUARDRAILS OR HEDGE FENCE FOR BRIDGES

The board of county commissioners shall erect and maintain, where not already done, one or more guardrails on each end of a county bridge, viaduct, or culvert more than five feet high and on each side of every approach to a county bridge, viaduct, or culvert, if the approach or embankment is more than six feet high. The board shall also protect, by suitable guardrails, all perpendicular wash banks more than eight feet in height, where such banks have an immediate connection with a public highway other than state highways, or are adjacent thereto in an unprotected condition.

It shall be a sufficient compliance with this section, if the board causes to be erected and maintained a good stockproof hedge fence where a guardrail is required. Such guardrails or hedge fences shall be erected in a substantial manner, having sufficient strength to protect life and property, the expense thereof to be paid out of the county bridge fund.

OHIO R.C. § 5591.37 NONCOMPLIANCE

Failure to comply with section 5591.36 of the Revised Code shall render the county liable for all accidents or damages as a result of such failure.

It shall be a sufficient compliance with this section, if the board causes to be erected and maintained a good stockproof hedge fence where a guardrail is required. Such guardrails or hedge fences shall be erected in a substantial manner, having sufficient strength to protect life and property, the expense thereof to be paid out of the county bridge fund.

APPENDIX J

AMENDED SUBSTITUTE HOUSE BILL NO. 350

Act Effective Date: 1-27-97
Date Passed: 9-26-96
Date Approved by Governor: 10-28-96
Date Filed: 10-28-96
File Number: 244
Chief Sponsor: TIBERI

2744.01 Definitions (Eff. 1-27-97)
As used in this chapter:
(A) "Emergency call" means a call to duty, including, but not limited to,
communications from citizens, police dispatches, and personal observations by peace officers of inherently dangerous situations that demand an immediate response on the part of a peace officer.
(B) "Employee" means an officer, agent, employee, or servant, whether or not compensated or full-time or part-time, who is authorized to act and is acting within the scope of <<- his ->> <<+ the officer's, agent's, employee's, or servant's +>> employment for a political subdivision. "Employee" does not
include an independent contractor <<- , ->> <<+ and +>> does not include any individual engaged by a school district pursuant to section 3319.301 of the Revised Code. "Employee" includes any elected or appointed official of a political subdivision. "Employee" also includes a person who has been convicted o f or pleaded guilty to a criminal offense

and who has been sentenced to perform community service work in a political subdivision whether pursuant to section 2951.02 of the Revised Code or otherwise, and a child who is found to be a delinquent child and who is ordered by a juvenile court pursuant to section 2151.355 of the Revised Code to perform community service or community work in a political subdivision.

(C)(1) "Governmental function" means a function of a political subdivision that is specified in division (C)(2) of this section or that satisfies any of the following:

(a) A function that is imposed upon the state as an obligation of sovereignty and that is performed by a political subdivision voluntarily or pursuant to legislative requirement;

(b) A function that is for the common good of all citizens of the state;

(c) A function that promotes or preserves the public peace, health, safety, or welfare; that involves activities that are not engaged in or not customarily engaged in by nongovernmental persons; and that is not specified in division (G)(2) of this section as a proprietary function.

(2) A "governmental function" includes, but is not limited to, the following:

(a) The provision or nonprovision of police, fire, emergency medical, ambulance, and rescue services or protection;

(b) The power to preserve the peace; to prevent and suppress riots, disturbances, and disorderly assemblages; to prevent, mitigate, and clean up releases of oil and hazardous and

extremely hazardous substances as defined in section 3750.01 of the Revised Code; and to protect persons and property;

(c) The provision of a system of public education;

(d) The provision of a free public library system;

(e) The regulation of the use of, and the maintenance and repair of, roads, highways, streets, avenues, alleys, sidewalks, bridges, aqueducts, viaducts, and public grounds;

(f) Judicial, quasi-judicial, prosecutorial, legislative, and quasi-legislative functions;

(g) The construction, reconstruction, repair, renovation, maintenance, and operation of buildings that are used in connection with the performance of a governmental function, including, but not limited to, office buildings and courthouses;

(h) The design, construction, reconstruction, renovation, repair, maintenance, and operation of jails, places of juvenile detention, workhouses, or any other detention facility, as defined in section 2921.01 of the Revised Code;

(i) The enforcement or nonperformance of any law;

(j) The regulation of traffic, and the erection or nonerection of traffic signs, signals, or control devices;

(k) The collection and disposal of solid wastes, as defined in section 3734.01 of the Revised Code, including, but not limited to, the operation of solid waste disposal facilities, as "facilities" is defined in that section, and the collection and management of hazardous waste generated by households. As used in division (C)(2)(k) of this section, "hazardous waste generated by households" means solid waste originally

generated by individual households that is listed specifically as hazardous waste in or exhibits one or more characteristics of hazardous waste as defined by rules adopted under section 3734.12 of the Revised Code, but that is excluded from regulation as a hazardous waste by those rules.

(l) The provision or nonprovision, planning or design, construction, or reconstruction of a public improvement, including, but not limited to, a sewer system;

(m) The operation of a human services department or agency, including, but not limited to, the provision of assistance to aged and infirm persons and to persons who are indigent;

(n) The operation of a health board, department, or agency, including, but not limited to, any statutorily required or permissive program for the provision of immunizations or other inoculations to all or some members of the public, provided that a "governmental function" does not include the supply, manufacture, distribution, or development of any drug or vaccine employed in any such immunization or inoculation program by any supplier, manufacturer, distributor, or developer of the drug or vaccine;

(o) The operation of mental health facilities, mental retardation or developmental disabilities facilities, alcohol treatment and control centers, and children's homes or agencies;

(p) The provision or nonprovision of inspection services of all types, including, but not limited to, inspections in connection with building, zoning, sanitation, fire, plumbing, and electrical codes, and the taking of actions in connection with those types of codes, including, but not limited to, the

approval of plans for the construction of buildings or structures and the issuance or revocation of building permits or stop work orders in connection with buildings or structures;

(q) Urban renewal projects and the elimination of slum conditions;

(r) Flood control measures;

(s) The design, construction, reconstruction, renovation, operation, care, repair, and maintenance of a township cemetery;

(t) The issuance of revenue obligations under section 140.06 of the Revised Code;

(u) The design, construction, reconstruction, renovation, repair, maintenance, and operation of any park, playground, playfield, indoor recreational facility, zoo, zoological park, bath, or swimming pool or pond, and the operation and control of any golf course;

(v) The provision of public defender services by a county or joint county public defender's office pursuant to Chapter 120. of the Revised Code;

(w) A function that the general assembly mandates a political subdivision to perform.

(D) "Law" means any provision of the constitution, statutes, or rules of the United States or of this state; provisions of charters, ordinances, resolutions, and rules of political subdivisions; and written policies adopted by boards of education. When used in connection with the "common law," this definition does not apply.

(E) "Motor vehicle" has the same meaning as in section

4511.01 of the Revised Code.

(F) "Political subdivision" or "subdivision" means a municipal corporation, township, county, school district, or other body corporate and politic responsible for governmental activities in a geographic area smaller than that of the state. "Political subdivision" includes, but is not limited to, a county hospital commission appointed under section 339.14 of the Revised Code, regional planning commission created pursuant to section 713.21 of the Revised Code, county planning commission created pursuant to section 713.22 of the Revised Code, joint planning council created pursuant to section 713.231 of the Revised Code, interstate regional planning commission created pursuant to section 713.30 of the Revised Code, port authority created pursuant to section 4582.02 or 4582.26 of the Revised Code or in existence on December 16, 1964, regional council established by political subdivisions pursuant to Chapter 167. of the Revised Code, emergency planning district and joint emergency planning district designated under section 3750.03 of the Revised Code, joint emergency medical services district created pursuant to section 307.052 of the Revised Code, a fire and ambulance district created pursuant to section 505.375 of the Revised Code, joint interstate emergency planning district established by an agreement entered into under that section, and county solid waste management district and joint solid waste management district established under section 343.01 or 343.012 of the Revised Code.

(G)(1) "Proprietary function" means a function of a political

subdivision that is specified in division (G)(2) of this section or that satisfies both of the following:
(a) The function is not one described in division (C)(1)(a) or (b) of this section and is not one specified in division (C)(2) of this section;
(b) The function is one that promotes or preserves the public peace, health, safety, or welfare and that involves activities that are customarily engaged in by nongovernmental persons.
(2) A "proprietary function" includes, but is not limited to, the following:
(a) The operation of a hospital by one or more political subdivisions;
(b) The design, construction, reconstruction, renovation, repair, maintenance, and operation of a public cemetery other than a township cemetery;
(c) The establishment, maintenance, and operation of a utility, including, but not limited to, a light, gas, power, or heat plant, a railroad, a busline or other transit company, an airport, and a municipal corporation water supply system;
(d) The maintenance, destruction, operation, and upkeep of a sewer system;
(e) The operation and control of a public stadium, auditorium, civic or social center, exhibition hall, arts and crafts center, band or orchestra, or off-street parking facility.
(H) <<+ " Public roads" means public roads, highways, streets, avenues, alleys, and bridges within a political subdivision. "Public roads" does not include berms, shoulders, rights-of-way, or traffic control devices, unless the traffic control devices are mandated by the Ohio manual of

uniform traffic control devices. +>>
<<+ (I) +>> "State" means the state of Ohio, including, but not limited to, the general assembly, the supreme court, the offices of all elected state officers, and all departments, boards, offices, commissions, agencies, colleges and universities, institutions, and other instrumentalities of the state of Ohio. "State" does not include political subdivisions.

OHIO R.C. § 2744.02 Political subdivision not liable for injury, death, or loss; exceptions [Eff. 1-27-97]
(A)(1) For the purposes of this chapter, the functions of political subdivisions are hereby classified as governmental functions and proprietary functions. Except as provided in division (B) of this section, a political subdivision is not liable in damages in a civil action for injury, death, or loss to <<- persons ->> <<+ person +>> or property allegedly caused by any act or omission of the political subdivision or an employee of the political subdivision in connection with a governmental or proprietary function.
(2) Subject to statutory limitations upon their monetary jurisdiction, the courts of common pleas, the municipal courts, and the county courts have jurisdiction to hear and determine civil actions governed by or brought pursuant to this chapter.
(B) Subject to sections 2744.03 and 2744.05 of the Revised Code, a political subdivision is liable in damages in a civil action for injury, death, or loss to <<- persons ->> <<+ person +>> or property allegedly caused by an act or omission of the political subdivision or of any of its

employees in connection with a governmental or proprietary function, as follows:

(1) Except as otherwise provided in this division, political subdivisions are liable for injury, death, or loss to <<- persons ->> <<+ person +>> or property caused by the negligent operation of any motor vehicle by their employees upon the public roads <<- , highways, or streets ->> when the employees are engaged within the scope of their employment and authority. The following are full defenses to <<- such ->> <<+ that +>> liability:

(a) A member of a municipal corporation police department or any other police agency was operating a motor vehicle while responding to an emergency call and the operation of the vehicle did not constitute willful or wanton misconduct;

(b) A member of a municipal corporation fire department or any other fire fighting agency was operating a motor vehicle while engaged in duty at a fire, proceeding toward a place where a fire is in progress or is believed to be in progress, or answering any other emergency alarm and the operation of the vehicle did not constitute willful or wanton misconduct;

(c) A member of an emergency medical service owned or operated by a political subdivision was operating a motor vehicle while responding to or completing a call for emergency medical care or treatment, the member was holding a valid commercial driver's license issued pursuant to Chapter 4506. or a driver's license issued pursuant to Chapter 4507. of the Revised Code, the operation of the vehicle did not constitute willful or wanton misconduct, and the operation complies with the precautions of section

4511.03 of the Revised Code.

(2) Except as otherwise provided in section 3746.24 of the Revised Code,

political subdivisions are liable for injury, death, or loss to <<-

persons ->> <<+ person +>> or property caused by the negligent performance of acts by their employees with respect to proprietary functions of the political subdivisions.

(3) Except as otherwise provided in section 3746.24 of the Revised Code, political subdivisions are liable for injury, death, or loss to <<- persons ->> <<+ person +>> or property caused by their <<+ negligent +>> failure to keep public roads <<- , highways, streets, avenues, alleys, sidewalks, bridges, aqueducts, viaducts, or public grounds within the political subdivisions open, ->> in repair <<- , and free from nuisance ->> <<+ and other negligent failure to remove obstructions from public roads +>> , except that it is a full defense to <<- such ->> <<+ that +>> liability, when a bridge within a municipal corporation is involved, that the municipal corporation does not have the responsibility for maintaining or inspecting the bridge.

(4) Except as otherwise provided in section 3746.24 of the Revised Code, political subdivisions are liable for injury, death, or loss to <<- persons ->> <<+ person +>> or property that is caused by the negligence of their employees and that occurs within or on the grounds of <<+ , and is due to physical defects within or on the grounds of, +>> buildings that are used in connection with the performance of a governmental function, including, but not limited to, office

buildings and courthouses, but not including jails, places of juvenile detention, workhouses, or any other detention facility, as defined in section 2921.01 of the Revised Code.
(5) In addition to the circumstances described in divisions (B)(1) to (4) of this section, a political subdivision is liable for injury, death, or loss to <<- persons ->> <<+ person +>> or property when liability is expressly imposed upon the political subdivision by a section of the Revised Code, including, but not limited to, sections 2743.02 and 5591.37 of the Revised Code. Liability shall not be construed to exist under another section of the Revised Code merely because <<+ that section imposes +>> a responsibility <<- is imposed ->> <<+ or mandatory duty +>> upon a political subdivision <<- or ->> <<+ , +>> because of a general authorization <<+ in that section +>> that a political subdivision may sue and be sued <<+ , or because that section uses the term "shall" in a provision pertaining to a political subdivision. +>>
<<+ (C) An order that denies a political subdivision or an employee of a political subdivision the benefit of an alleged immunity from liability as provided in Chapter 2744. or any other provision of the law is a final order. +>>

OHIO R.C § 2744.03 Defenses and immunities [Eff. 1-27-97]

(A) In a civil action brought against a political subdivision or

an employee of a political subdivision to recover damages for injury, death, or loss to persons or property allegedly caused by any act or omission in connection with a governmental or proprietary function, the following defenses or immunities may be asserted to establish nonliability:

(1) The political subdivision is immune from liability if the employee involved was engaged in the performance of a judicial, quasi-judicial,prosecutorial, legislative, or quasi-legislative function.

(2) The political subdivision is immune from liability if the conduct of the employee involved, other than negligent conduct, that gave rise to the claim of liability was required by law or authorized by law, or if the conduct of the employee involved that gave rise to the claim of liability was necessary or essential to the exercise of powers of the political subdivision or employee.

(3) The political subdivision is immune from liability if the action or failure to act by the employee involved that gave rise to the claim of liability was within the discretion of the employee with respect to policy-making, planning, or enforcement powers by virtue of the duties and responsibilities of the office or position of the employee.

(4) The political subdivision is immune from liability if the action or failure to act by the political subdivision or employee involved that gave rise to the claim of liability resulted in injury or death to a person who had been convicted of or pleaded guilty to a criminal offense and who, at the time of the injury or death, was serving any portion of <<- his ->> <<+ the person's +>> sentence by performing

community service work for or in the political subdivision whether pursuant to section 2951.02 of the Revised Code or otherwise, or resulted in injury or death to a child who was found to be a delinquent child and who, at the time of the injury or death, was performing community service or community work for or in a political subdivision in accordance with the order of a juvenile court entered pursuant to section 2151.355 of the Revised Code, and if, at the time of <<- his ->> <<+ the person's or child's +>> injury or death, the person or child was covered for purposes of Chapter 4123. of the Revised Code in connection with the community service or community work for or in the political subdivision.

(5) The political subdivision is immune from liability if the injury, death, or loss to persons or property resulted from the exercise of judgment or discretion in determining whether to acquire, or how to use, equipment, supplies, materials, personnel, facilities, and other resources unless the judgment or discretion was exercised with malicious purpose, in bad faith, or in a wanton or reckless manner.

(6) In addition to any immunity or defense referred to in division (A)(7) of this section and in circumstances not covered by that division or section 3746.24 of the Revised Code, the employee is immune from liability unless one of the following applies:

(a) <<- His ->> <<+ The employee's +>> acts or omissions were manifestly outside the scope of <<- his ->> <<+ the employee's +>> employment or official responsibilities;

(b) <<- His ->> <<+ The employee's +>> acts or omissions

were with malicious purpose, in bad faith, or in a wanton or reckless manner;
(c) Liability is expressly imposed upon the employee by a section of the Revised Code. <<+ Liability shall not be construed to exist under another section of the Revised Code merely because that section imposes a responsibility or mandatory duty upon an employee, because of a general authorization in that section that an employee may sue and be sued, or because the section uses the term "shall" in a provision pertaining to an employee. +>>
(7) The political subdivision, and an employee who is a county prosecuting attorney, city director of law, village solicitor, or similar chief legal officer of a political subdivision, an assistant of any such person, or a judge of a court of this state is entitled to any defense or immunity available at common law or established by the Revised Code.
(B) Any immunity or defense conferred upon, or referred to in connection with, an employee by division (A)(6) or (7) of this section does not affect or limit any liability of a political subdivision for an act or omission of the employee as provided in section 2744.02 of the Revised Code.

OHIO R.C. § 2744.04.

(A) An action against a political subdivision to recover damages for injury, death, or loss to <<- persons ->> <<+ person +>> or property allegedly caused by any act or omission in connection with a governmental or proprietary function, whether brought as an original action, cross-claim,

counterclaim, third-party claim, or claim for subrogation, shall be brought within two years after the cause of action <<- arose ->> <<+ accrues +>>, or within any applicable shorter period of time for bringing the action provided by the Revised Code. <<+ The period of limitation contained in this division shall be tolled pursuant to section 2305.16 of the Revised Code+>>

This division applies to actions brought against political subdivisions by all persons, governmental entities, and the state.

(B) In the complaint filed in a civil action against a political subdivision or an employee of a political subdivision to recover damages for injury, death, or loss to <<- persons ->> <<+ person +>> or property allegedly caused by an act or omission in connection with a governmental or proprietary function, whether filed in an original action, cross-claim, counterclaim, third-party claim, or claim for subrogation, the complainant shall include a demand for a judgment for the damages that the judge in a nonjury trial or the jury in a jury trial finds that the complainant is entitled to be awarded, but shall not specify in that demand any monetary amount for damages sought.

R.C. § 2744.05.

Notwithstanding any other provisions of the Revised Code or rules of a court to the contrary, in an action against a political subdivision to recover damages for injury, death, or loss to <<- persons ->> <<+person +>> or property caused by an act or omission in connection with a governmental or

proprietary function:
(A) Punitive or exemplary damages shall not be awarded <<- ; ->> <<+ . +>>
(B) <<+ (1) +>> If a claimant receives or is entitled to receive benefits for injuries or loss allegedly incurred from a policy or policies of insurance or any other source, the benefits shall be disclosed to the court, and the amount of the benefits shall be deducted from any award against a political subdivision recovered by that claimant. No insurer or other person is entitled to bring an action under a subrogation provision in an insurance or other contract against a political subdivision with respect to <<- such ->> <<+ those +>> benefits. <<- Nothing ->> <<+ The amount of the benefits shall be deducted from an award against a political subdivision under division (B)(1) of this section regardless of whether the claimant may be under an obligation to pay back the benefits upon recovery, in whole or in part, for the claim. A claimant whose benefits have been deducted from an award under division (B)(1) of this section is not considered fully compensated and shall not be required to reimburse a subrogated claim for benefits deducted from an award pursuant to division (B)(1) of this section. +>>
(2) <<+ Nothing +>> in <<- this ->> division (B)(1) <<+ of this section +>> shall be construed to limit the rights of a beneficiary under a life insurance policy or the rights of sureties under fidelity or surety bonds.
(C)(1) There shall not be any limitation on compensatory damages that represent the actual loss of the person who is awarded the damages. However, except in wrongful death

actions brought pursuant to Chapter 2125. of the Revised Code, damages that arise from the same cause of action, transaction or occurrence, or series of transactions or occurrences and that do not represent the actual loss of the person who is awarded the damages shall not exceed two hundred fifty thousand dollars in favor of any one person. The limitation on damages that do not represent the actual loss of the person who is awarded the damages provided in this division does not apply to court costs that are awarded to a plaintiff, or to interest on a judgment rendered in favor of a plaintiff, in an action against a political subdivision.

(2) As used in this division, "the actual loss of the person who is awarded the damages" includes all of the following:

(a) All wages, salaries, or other compensation lost by the person injured as a result of the injury, including wages, salaries, or other compensation lost as of the date of a judgment and future expected lost earnings of <<- such a ->> <<+ the +>> person <<+ injured +>> ;

(b) All expenditures of the person injured or another person on <<- his ->> behalf <<+ of the person injured +>> for medical care or treatment, for rehabilitation services, or for other care, treatment, services, products, or accommodations that were necessary because of the injury;

(c) All expenditures to be incurred in the future, as determined by the court, by the person injured or another person on <<- his ->> behalf <<+ of the person injured +>> for medical care or treatment, for rehabilitation services, or for other care, treatment, services, products, or accommodations that will be necessary because of the injury;

(d) All expenditures of a person whose property was injured or destroyed or of another person on <<- his ->> behalf <<+ of the person whose property was injured or destroyed +>> in order to repair or replace the property that was injured or destroyed;

(e) All expenditures of the person injured or <<+ of the person +>> whose property was injured or destroyed or of another person on <<- his ->> behalf <<+ of the person injured or of the person whose property was injured or destroyed +>> in relation to the actual preparation or presentation of the <<- person's ->> claim <<+ involved +>> ;

(f) Any other expenditures of the person injured or <<+ of the person +>> whose property was injured or destroyed or of another person on <<- his ->> behalf <<+ of the person injured or of the person whose property was injured or destroyed +>> that the court determines represent an actual loss experienced because of the personal or property injury or property loss. "The actual loss of the person who is awarded the damages" does not include any fees paid or owed to an attorney for any services rendered in relation to a personal or property injury or property loss, and does not include any damages awarded for pain and suffering, for the loss of society, consortium, companionship, care, assistance, attention, protection, advice, guidance, counsel, instruction, training, or education of the person injured, for mental anguish, or for any other intangible loss.

R.C. § 2744.06.

(A) Real or personal property, and moneys, accounts, deposits, or investments of a political subdivision are not subject to execution, judicial sale, garnishment, or attachment to satisfy a judgment rendered against a political subdivision in a civil action to recover damages for injury, death, or loss to <<- persons ->> <<+ person +>> or property caused by an act or omission of the political subdivision or any of its employees in connection with a governmental or proprietary function. <<- Such ->> <<+ Those +>> judgments shall be paid from funds of the political subdivisions that have been appropriated for that purpose, but, if sufficient funds are not currently appropriated for the payment of judgments, the fiscal officer of a political subdivision shall certify the amount of any unpaid judgments to the taxing authority of the political subdivision for inclusion in the next succeeding budget and annual appropriation measure and payment in the next succeeding fiscal year as provided by section 5705.08 of the Revised Code,unless any <<- such ->> judgment <<+ of that nature +>> is to be paid from the proceeds of bonds issued pursuant to section 133.14 of the Revised Code or pursuant to annual installments authorized by division (B) or (C) of this section. (B)(1)(a) as used in this division, "the actual loss of the person who is awarded the damages" includes all of the following:

(i) All wages, salaries, or other compensation lost by the person injured as a result of the injury, as of the date of the judgment;

(ii) All expenditures of the person injured or of another

person on <<- his ->> behalf <<+ of the person injured +>> for medical care or treatment, for rehabilitation services, or for other care, treatment, services, products, or accommodations that were necessary because of the injury;

(iii) All expenditures of a person whose property was injured or destroyed or of another person on <<- his ->> behalf <<+ of the person whose property was injured or destroyed +>> in order to repair or replace the property that was injured or destroyed;

(iv) All expenditures of the person injured or whose property was injured or destroyed or of another person on <<- his ->> behalf <<+ of the person injured or whose property was injured or destroyed +>> in relation to the actual preparation or presentation of the <<- person's ->> claim <<+ involved +>> ;

(v) Any other expenditures of the person injured or <<- of the person ->> whose property was injured or destroyed or of another person on <<- his ->> behalf <<+ of the person injured or whose property was injured or destroyed +>> that the court determines represent an actual loss experienced because of the personal or property injury or property loss.

(b) As used in this division, "the actual loss of the person who is awarded the damages" does not include any of the following:

(i) Wages, salaries, or other compensation lost by the person injured as a result of the injury, that are future expected earnings of <<- such a ->> <<+ that +>> person;

(ii) Expenditures to be incurred in the future, as determined by the court, by the person injured or by another person on

<<- his ->> behalf <<+ of the person injured +>> for medical care or treatment, for rehabilitation services, or for other care, treatment, services, products, or accommodations that will be necessary because of the injury;

(iii) Any fees paid or owed to an attorney for any services rendered in relation to a personal or property injury or property loss;

(iv) Any damages awarded for pain and suffering, for the loss of society, consortium, companionship, care, assistance, attention, protection, advice, guidance, counsel, instruction, training, or education of the person injured, for mental anguish, or for any other intangible loss.

(2) Except as specifically provided to the contrary in this division, a court that renders a judgment against a political subdivision as described in division (A) of this section and that is not in favor of the state may authorize the political subdivision, upon the motion of the political subdivision, to pay the judgment or a specified portion of the judgment in annual installments over a period not to exceed ten years, subject to the payment of interest at the rate specified in <<+ division (A) of +>> section 1343.03 of the Revised Code. A court shall not authorize the payment in installments under this division of any portion of a judgment or entire judgment that represents the actual loss of the person who is awarded the damages. Additionally, a court shall not authorize the payment in installments under this division of any portion of a judgment or entire judgment that does not represent the actual loss of the person who is awarded the damages unless the court, after balancing the interests of the political

subdivision and of the person in whose favor the judgment was rendered, determines that installment payments would be appropriate under the circumstances and would not be unjust to the person in whose favor the judgment was rendered. If a court makes <<- such ->> a determination <<+ of that nature +>> , it shall fix the amount of the installment payments in <<- such ->> a manner <<- as to achieve ->> <<+ that achieves +>> for the person in whose favor the judgment was rendered <<- , ->> the same economic result over the period as <<-he ->> <<+ that person +>> would have received if the judgment or portion of the judgment subject to the installment payments had been paid in a lump sum payment.

(C) At the option of a political subdivision, a judgment as described in division (A) of this section and that is rendered in favor of the state may be paid in equal annual installments over a period not to exceed ten years, without the payment of interest.

<< Note: OH ST s 2305.11 >>

(B) The amendments to section 2305.11 of the Revised Code made in this act shall apply only to acts or omissions constituting the alleged basis of a claim of malpractice or of a medical, dental, optometric, or chiropractic claim, as defined in that section, that occur on or after the effective date of this act.

<< Note: OH ST s 2744.05 >>

(C) The amendments to section 2744.05 of the Revised Code made in this act shall apply only to actions against a political subdivision under Chapter 2744. of the Revised Code that are commenced on or after the effective date of this act.

<< OH ST s 5591.36 >>

Sec. 5591.36. <<- The ->> <<+ On county roads, the +>> board of county commissioners shall erect and maintain, where not already done, one or more guardrails on each end of a county bridge, viaduct, or culvert more than five feet high <<- and on each side of every approach to a county bridge, viaduct, or culvert, if the approach or embankment is more than six feet high ->> . The board <<+ also +>> shall <<- also ->> protect, by <<- suitable ->> guardrails, all <<- perpendicular wash banks more than eight feet in height ->> <<+ embankments with a rise of more than eight feet in height and with a downward slope of greater than seventy degrees +>> , where <<- such banks ->> <<+ the embankments +>> have an immediate connection with a <<- public highway other than state highways, or are adjacent thereto in an unprotected condition ->> <<+ county road. +>> <<- It shall be a sufficient compliance with this section, if the board causes to be erected and maintained a good stockproof hedge fence where a guardrail is required. Such guardrails or hedge fences shall be erected in a substantial manner, having sufficient strength to protect life and

property, the ->> <<+ The +>> expense <<- thereof to ->> <<+ for a guardrail required under this section shall +>> be paid out of the county bridge fund.

<< OH ST s 5591.37 >>

Sec. 5591.37. <<- Failure ->> <<+ Negligent failure +>> to comply with section 5591.36 of the Revised Code shall render the county liable for all accidents or damages as a result of <<- such ->> <<+ that +>> failure.

<< Repealed: OH ST ss 2305.131, 2305.27, 2307.42, 2307.43, 2309.01 >>

Section 2. That existing sections 109.36, 163.17, 723.01, 1343.03, 1701.95, 1707.01, 1775.14, 1901.041, 1901.17, 1901.18, 1901.181, 1901.20, 1905.032, 2117.06, 2125.01, 2125.02, 2125.04, 2305.01, 2305.10, 2305.11, 2305.16, 2305.25, 2305.251, 2305.35, 2305.37, 2305.38, 2307.31, 2307.32, 2307.33, 2307.60, 2307.61, 2307.71, 2307.72, 2307.73, 2307.75, 2307.78, 2307.80, 2315.01, 2315.18, 2315.19, 2315.20, 2315.21, 2317.45, 2317.62, 2323.51, 2501.02, 2743.18, 2743.19, 2744.01, 2744.02, 2744.03, 2744.04, 2744.05, 2744.06, 3113.219, 3701.19, 3722.08, 4112.02, 4112.14, 4112.99, 4113.52, 4171.10, 4399.18, 4507.07, 4513.263, 4582.27, 4909.42, 5111.81, 5591.36, and 5591.37 and
sections 2305.131, 2305.27, 2307.42, 2307.43, and 2309.01 of the
Revised Code are hereby repealed.